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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Lorenzo Leon Brown,

10 Plaintiff,

11 v.

12 Charles Ryan, et al.,

13 Defendants.

14 No. CV-17-00377-TUC-DCB

15 **ORDER**

16 On March 8, 2019, the Defendants filed a Motion for Clarification of the case
17 management schedule in this case. The Court agrees that clarification is needed, and it
18 follows.

19 Plaintiff filed this case on August 1, 2017. The Court screened the First Amended
20 Complaint and ordered it served on all the Defendants. The Plaintiff's claims involve
21 allegations that Dr. Goodman, a doctor for Corizon, changed his high blood pressure
22 medicine which caused him various bad side effects and failed to control his blood
23 pressure, and Corizon nurse Sweetapple refused to allow him to see a doctor in respect to
24 these problems. He filed related grievances which were denied by Corizon nurse Watson,
25 and his appeal of her denials were denied by Jacobs and Ryan. Plaintiff also alleges a
26 retaliation claim against Defendants Watson and Jacobs because he was moved to a
27 different, higher custody prison yard three days after he personally spoke to them about his
28 grievances.

29 Defendants answered the First Amended Complaint, and Defendant Jacobs filed a

1 Motion to Dismiss the retaliation claim on the ground that the Plaintiff failed to exhaust
2 available administrative remedies. The Court denied the motion because the exhaustion
3 issue could not be decided on the face of the First Amended Complaint. (Order (Doc. 31)).
4 The Court clarified that Count Three was a First Amendment retaliation claim; Counts One
5 and Two were Eighth Amendment medical care claims. (Order (Doc. 43)).

6 The Court issued the Case Management Scheduling Order on April 25, 2018,
7 affording 6 months for discovery commencing with the Order resolving the question of
8 exhaustion, (Scheduling Order (Doc. 18)), and stayed all discovery pending resolution of
9 the Motion to Dismiss. (Order (Doc. 23)). Discovery began: June 1, 2018.

10 The Plaintiff has repeatedly filed his actual discovery in the case, requiring this
11 Court to strike these filings. *See e.g.* (Order Doc. 65) at 4 (striking Plaintiff's
12 Interrogatories and Request for Production of Documents). To be clear, "disclosures under
13 Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed
14 until they are used in the proceeding or the court orders filing; depositions, interrogatories,
15 requests for documents or tangible things or to permit entry onto land, and requests for
16 admission." Fed. R. Civ. P.5(d)(1). The Court strikes the following discovery from the
17 record: Plaintiff's First Request for Production (Doc. 49); Plaintiff's Response to
18 Defendant's Response to Plaintiff's First Request for Production (Doc. 58), and Plaintiff's
19 Response to Defendants' Requests for Production (Doc. 80). All that is required is a Notice
20 of Service of Discovery. *See e.g.* (Ds' Notice (Doc. 66)). This rule is important because
21 it is not the Court's responsibility to peruse each discovery response and objection. The
22 parties are responsible for bringing discovery disputes that need to be resolved by the Court
23 forward by motion after they have met and conferred in good faith to resolve them.

24 On November 19, 2018, Defendant Jacobs reurged by Motion for Summary
25 Judgment his argument that the retaliation claim, Count Three, should be dismissed
26 because Plaintiff failed to exhaust available administrative remedies. The Court gave the
27 Plaintiff notice that he must file a Response or run the risk of the motion being summarily
28 granted. The Court set the deadline for the Response on December 21, 2018. (Order (Doc.

1 75)). On November 27, 2018, the Court extended the discovery deadline related to the
2 merits of the retaliation claim to be: “30 days following this Court’s ruling on the
3 exhaustion question. (Order (Doc. 76)). Defendants also brought it to the Court’s attention
4 that Defendant Goodman had failed to file an Answer or propound discovery and sought
5 an extension. The Court allowed 60 days for the parties to conduct discovery related to the
6 claims against Defendant Goodman. *Id.* The Court held that “all other discovery is
7 closed.”¹ *Id.* at 2.

8 On February 11, 2019, the Court reconsidered and allowed limited additional
9 discovery for the Plaintiff because it was necessary before he could file a Response to
10 Jacobs’ Motion for Summary Judgment: Exhaustion. The Court ordered the Defendant to
11 provide the Plaintiff with copies of his informal or formal grievances and grievance
12 responses that were not attached to the Motion for Summary Judgment “beginning 30 days
13 prior to Plaintiff’s June 22, 2016 transfer to Rynning Unit and through to 30 days after the
14 transfer.” (Order Doc. 78) at 2.) The Court allowed the Plaintiff 30 days to serve no more
15 than 10 interrogatories, including all discrete parts, on Defendant Jacobs relevant to the
16 question of exhaustion. *Id.* The Court allowed 14 days for responses and set the deadline
17 for Plaintiff to file the Response to Jacob’s Motion for Summary Judgment: June 5, 2019.
18 *Id.* at 3. On February 25, 2019, the Defendants filed a Notice of Compliance that they had
19 served the grievance documents on the Plaintiff.

20 On March 8, 2019, Defendants filed the Motion for Clarification of the pending case
21 management dates. The Court has reviewed the status of the case and vacates all the
22 existing deadlines. The Court reflects that Count III, the retaliation claim, has delayed the
23 remainder of this case, which are the medical claims raised in Counts One and Two. The
24 Plaintiff now has all the discovery needed to file a Response to Jacobs’ Motion for
25 Summary Judgment: Exhaustion. Following a ruling by the Court on the question of
26 exhaustion, if the claim remains the Court has ruled that it will allow 30 more days for the
27 parties to complete discovery going to the merits of the retaliation claim. Also remaining
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¹ Discovery ended December 1, 2018.

1 is 60 days of discovery related to claims against Goodman. The Court agrees that
2 clarification is necessary.

3 **Accordingly,**

4 **IT IS ORDERED** that the Motion for Clarification (Doc. 82) is GRANTED.

5 **IT IS FURTHER ORDERED** that the existing case management deadlines are
6 vacated, and reset as follows:

- 7 1. Discovery is closed, with the exception of discovery going to the merits of the
8 retaliation claim and the claim against Defendant Goodman.
- 9 2. The Plaintiff shall file the Response to Jacobs' Motion for Summary Judgment:
10 Exhaustion within 30 days of the filing date of this Order or by April 13, 2019.
- 11 3. Discovery related to claims against Goodmann shall be completed within 90
12 days of the filing date of this Order or by May 13, 2019.
- 13 4. All dispositive motions on the merits of the claims shall be due within 30 days
14 of this Court's ruling on the currently pending dispositive motion, Jacob's
15 Motion for Summary Judgment: Exhaustion.
- 16 5. The Joint Pretrial Order shall be filed within 30 days of this Court's disposition
17 of the dispositive motions going to the merits of the claims.

18 **IT IS FURTHER ORDERED** that the Plaintiff's discovery documents are
19 STRICKEN as follows: Plaintiff's First Request for Production (Doc. 49); Plaintiff's
20 Response to Defendant's Response to Plaintiff's First Request for Production (Doc. 58),
21 and Plaintiff's Response to Defendants' Requests for Production (Doc. 80). All that is
22 required is a Notice of Service of Discovery. PLAINTIFF SHALL NOT FILE

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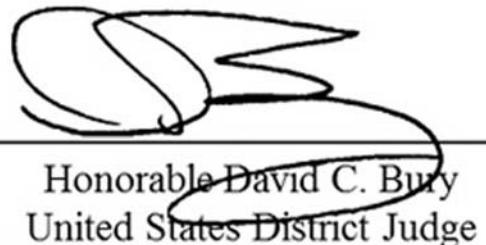
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1 DISCOVERY REQUESTS OR DISCLOSURES MADE BETWEEN THE PARTIES
2 UNLESS IT IS AS AN ATTACHMENT TO A MOTION RELATED TO A DISCOVERY
3 DISPUTE.

4 Dated this 13th day of March, 2019.
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Honorable David C. Bury
United States District Judge

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